

SANJIV

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2917 OF 2005

Mr. Ajit Singh D. Ahluwalia

...Petitioner

Vs.

Prakash Vishnu Phatarpekar & Anr.

....Respondents

Mr. H. R. Desai for the petitioner.

Mr. Aabad H. Ponda i/by Mr. Gautam Yadav for respondent 1.

Ms. M. H. Mhatre, APP for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE : 4TH DECEMBER, 2006.

P. C.:-

1. In this petition, filed under Section 482 of the Code of Criminal Procedure ("The Code", for short) and Article 227 of the Constitution of India, the petitioner has prayed that the impugned order dated 05/09/2005 passed by the Sessions Court, Greater Bombay in Criminal Revision Application No. 515 of 2005 and the impugned order issuing process, passed by the Metropolitan

Magistrate, 14th Court, Girgaon, Mumbai in Criminal Case No. 80/S/2002 be quashed and set aside.

2. This petition arises out of the proceedings under Section 138 of the Negotiable Instruments Act 1881. It appears that the Mumbai Majdoor Sabha, a Trade Union has filed a complaint through its treasurer under Section 138 of the Negotiable Instruments Act against the petitioner who is original accused 2 and respondent 2 and 3 who are original accused 1 and 3 respectively, on the ground that original accused 1 company took loan of Rs.25,76,556/- from the Mumbai Mazdoor Sabha. Accused 2 executed 6 promissory notes on behalf of accused 1. Accused 1 through accused 2 gave postdated cheques towards payment of loan amount at the time of obtaining the said loan.

3. The said cheques when presented for encashment, bounced. They were again presented on 26/03/1993 by the petitioner on the request of original accused 2 and 3. On re-presentation, the cheques again bounced. Hence after issuing the necessary notice the complaint came to be filed. Process was issued on the said complaint.

4. The petitioner filed criminal revision application in Sessions Court at Bombay, being aggrieved by the issuance of process. The revision application having been dismissed, the petitioner has approached this court.

5. I have heard at considerable length the learned counsel for the petitioner. The learned counsel submitted that the first notice was issued by the complainant on 31/03/1993 after the cheques were dishonoured. Thereafter the complainant presented the cheques for encashment again on 26/03/1993. However, again cheques were dishonoured. Thereafter, second notice was issued on 23/04/1993 and after that the instant complaint came to be filed. Learned counsel relied on the judgment of the Supreme Court in Sadanandan Bhadran Vs Madhavan Sunil Kumar 1998 All MR (Cri) 1613. He contended that the proceedings initiated on the basis of second notice are illegal and hence this court should quash the proceedings. Learned counsel contended that the complaint filed by the complainant is also barred by limitation. He submitted that even the revision application was not filed within the period of limitation. No application for condonation of delay was filed by the petitioner and on

that count the revisional court should have quashed the said proceedings.

6. Mr. Ponda, learned counsel for the respondent, on the other hand, submitted that the respondent has not admitted the first notice. He submitted that the company is the drawer of the cheque. The notice has to be issued only to the drawer of the cheque. He drew my attention to the complaint and submitted that in the complaint there is no mention of the alleged first notice dated 31/03/1993 and therefore, the contention of Mr. Desai must be rejected. Mr. Ponda also relied on the judgment of the Single Judge of this Court in Ashwini kumar & Anr. Vs. Dilip Mehta & Anr. 2006 All MR (Cri)1387 and contended that even if it is assumed that the first notice was given since the instant complaint is pending in the Court, the proviso to Section 142(b) will continue to apply to the instant proceedings.

7. I have given anxious consideration to the submissions advanced by both sides. If the first notice is not admitted by the complainant, then whether or not such a notice was in fact issued will have to be ascertained and for that purpose evidence will have to be adduced. So far as the contention of delay is concerned, the 1st

respondent's case is that the first notice was not sent and therefore the question of condonation of delay does not arise. In my opinion even for examining this contention evidence will have to be adduced. Process cannot be quashed on this count. In the circumstances the petition is rejected. The complaint is of the year 1993. About thirteen long years have passed. It is high time the case is finally decided. Hence the trial court is directed to dispose of the Criminal Case No. 80/S/2002 within a period of 6 months from the date of receipt of the order of this court by it. Copy of the order is expedited.

(SMT. RANJANA DESAI, J)